IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7411 OF 2007

Bharat Forge Kamgar Sangh ..Petitioner

Vs.

1. The Deputy Registrar of Trade Unions, Pune and anr. ..Respondents

Mr. N.A. Kulkarni for petitioner.

CORAM: B.H. MARLAPALLE, J.

Date : December 10, 2007.

P.C.:

1. Heard Mr. Kulkarni the learned counsel for the petitioner - Union which is aggrieved by the certificate dated 13/6/2007 issued by the Deputy Registrar of Trade Unions, Pune under Section 28(1A) of the Trade Unions Act, 1926, thereby granting consent to refer the dispute regarding the management of the Union for adjudication to the Industrial Tribunal and the said certificate is granted in form "L" under Section 28(1A) of the Bombay Trade Unions Regulation 1927 on the application made by one Shri Kumar Popat Navale.

2. Mr. Kulkarni submitted that the notice was not issued in form "K" and secondly the complainant Shri Navale ceased to be a member of the petitioner - Union and in any case he was not a member of the said Union during the period of preceding more than six months with reference to the date on which he approached the Deputy Registrar of the Trade Unions. It was further pointed out by Mr. Kulkarni that though Mr. Navale is the employee of M/s. Bharat Forge Ltd., the establishment in which the petitioner - Union operates, he has not been earning any salary and, therefore, there could be no deduction from his salary towards the Union membership. In support of his contentions that the complainant ceased to a member of the said Union, Mr. Kulkarni has referred to Clause 5 of the petitioner - Union's Constitution which states that a member who has fallen in arrears for a period of six months is ceased to be a member of the Union unless the sub committee otherwise permits.

3. The Deputy Registrar had issued notice to both the parties and his findings are placed on record. So

far as the membership issue is concerned, the complainant had pointed out that the last elections of the office bearers of the petitioner - Union were held in December, 2003 and he was elected as the Assistant Treasurer. He had paid subscription till the year 2004 and for the subsequent years from 2005 to 2007 he had sent the subscription by money orders, however, the money orders were returned by refusing to accept the same. He placed before the Deputy Registrar copies of money order receipts and, therefore, the Deputy Registrar was not impressed by the Union's claim that the complainant was not eligible to raise a dispute regarding the management of the Union. Mr. Kulkarni also referred to a decision in the case of Borosil Glass Works Ltd. Employees Union vs. D.D. Bambode and ors. [2001 I CLR 459] and submitted that so long as the complainant was not a member of the petitioner - Union, he did not have any locus to approach the Deputy Registrar and the Deputy Registrar should not have entertained the application to issue consent certificate under Section 28(1A) of the Trade Unions Act.

4. In the obtaining circumstances of this case whether the complainant was a member of the Union on the date he raised the dispute would be a mixed question of fact and law and such an issue could be decided by the reference court as a preliminary issue along with all other issues on the basis of the evidence both documentary as well as oral that the parties may adduce before it. So far as the Deputy Registrar is concerned, he had sufficient material before him to believe that the membership of the complainant would be required to be adjudicated by the reference court and, therefore, on that ground alone consent could not be refused.

5. The other contentions regarding the notice in form "K" is concerned, the same was also taken up before the Deputy Registrar. Parties were heard in the consent proceedings. The Deputy Registrar has elaborately dealt with the issues discussed before him and his findings on the issues that require adjudication. The complainant had taken up the issues regarding the management of the Union, management of the housing fund, medical fund, the acceptance of

Union membership by money order or any other mode other than deduction from the salary, victimization of some workers at the hands of the management in connivance with the Union and the appointment of Shri Punji as a General Secretary are some of the issues which were considered by the Deputy Registrar, he had held proceedings on those issues and granted the impugned consent certificate.

6. I, therefore, do not find any error apparent on the face of the record so as to call for interference under Article 227 of the Constitution in the impugned consent letter granted by the Deputy Registrar and, therefore, this petition must fail at the threshold.

7. The petition is hereby rejected summarily and it is made clear that the preliminary issue as to whether the complainant is a valid member of the petitioner - Union as on the date he submitted the complaint to the Deputy Registrar of Trade Unions will be a preliminary issue to be decided by the reference tribunal along with all other issues on the basis of

the evidence that the parties may adduce before it.

(B.H. Marlapalle,J.)